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**Regulations Pertaining to the
INVESTMENT CREDIT ACT
Sections 7-9A-1 TO 7-9A-11 NMSA 1978**

[3.13 NMAC]

Revised June 2009

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Publication 3.13 NMAC
Investment Credit Act and Regulations

7-9A-1. SHORT TITLE.--Chapter 7, Article 9A NMSA 1978 may be cited as the "Investment Credit Act".
(Laws 1991, Chapter 162, Section 1)

3.13.1.8 - CITATION OF STATUTES

Unless otherwise stated, all citations to statutes in Chapter 3.13 NMAC are to the New Mexico Statutes Annotated 1978.

[9/14/96; 3.13.1.8 NMAC - Rn & A, 3 NMAC 13.1.8, 6/29/01]

7-9A-2. PURPOSE OF ACT.--It is the purpose of the Investment Credit Act to provide a favorable tax climate for manufacturing businesses and to promote increased employment in New Mexico.
(Laws 1983, Chapter 206, Section 1)

7-9A-2.1. LEGISLATIVE OVERSIGHT.--The interim revenue stabilization and tax policy committee during the 2005 interim shall conduct a review of the use of the investment credit and the effectiveness of the credit in meeting the state's economic development and tax policy objectives. Following the study, the committee shall determine whether changes are necessary in the Investment Credit Act and report its findings and recommendations to the second session of the forty-seventh legislature.
(Laws 2001, Chapter 57, Section 2)

7-9A-3. DEFINITIONS.--As used in the Investment Credit Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "equipment" means an essential machine, mechanism or tool, or a component or fitting thereof, used directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing operation. "Equipment" does not include any vehicle that leaves the site of the manufacturing operation for purposes of transporting persons or property or any property for which the taxpayer claims the credit pursuant to Section 7-9-79 NMSA 1978;

C. "manufacturing" means combining or processing components or materials, including recyclable materials, to increase their value for sale in the ordinary course of business, including genetic testing and production, but not including:

(1) construction;

(2) farming;

(3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999; or

(4) processing natural resources, including hydrocarbons;

D. "manufacturing operation" means a plant, including a genetic testing and production facility, employing personnel to perform production tasks, in conjunction with equipment not previously existing at the site, to produce goods;

E. "recyclable materials" means materials that would otherwise become solid waste if not recycled and that can be collected, separated or processed and placed in use in the form of raw materials or products; and

F. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment over or for collection and payment over of any tax or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid.

(Laws 2002, Chapter 37, Section 7)

3.13.2.7 - DEFINITIONS: "SUBJECT TO DEPRECIATION" DEFINED

For purposes of Section 7-9A-3, "subject to depreciation" means the taxpayer's federal income tax return must include a depreciation expense with respect to equipment for which an investment credit is sought or claimed. Equipment depreciated under the accelerated cost recovery system, I.R.C. Section 168, and property for which the taxpayer makes an election

under Internal Revenue Code Section 179 are “subject to depreciation”.
[3.13.2.7. NMAC - Rp 3 NMAC 13.6.7, 4/28/2000]

**7-9A-4. ADMINISTRATION OF THE ACT.--The department is charged with the administration of the Investment Credit Act.
(Laws 1991, Chapter 162, Section 3)**

7-9A-5. INVESTMENT CREDIT--AMOUNT--CLAIMANT.--The investment credit provided for in the Investment Credit Act is an amount equal to the percent of the compensating tax rate provided for in the Gross Receipts and Compensating Tax Act applied to the value of the qualified equipment and may be claimed by the taxpayer carrying on manufacturing operation in New Mexico.

(Laws 1991, Chapter 162, Section 4)

3.13.2.16 - WHEN CLAIM BARRED

If a taxpayer claims any amount of research and development small business tax credit with respect to a reporting period, the taxpayer may not claim any amount of approved investment credit with respect to that same period. If for the same reporting period an amount of investment credit is claimed in addition to any amount of research and development small business tax credit, the amount of investment credit will be disallowed by the department, which may result in an underpayment of tax. The taxpayer is not barred from applying for approval of new or additional investment credit with respect to qualified equipment purchased or introduced into New Mexico during that reporting period.

[3.13.2.16 NMAC – N, 5/15/07]

7-9A-6. QUALIFIED EQUIPMENT.--Equipment not previously used in New Mexico and not previously approved for a credit under the Investment Credit Act that is owned by the taxpayer or owned by the United States or an agency or instrumentality thereof or the state or a political subdivision thereof and leased or subleased to the taxpayer is qualified equipment if it is in New Mexico and is incorporated or to be incorporated within one year into a manufacturing operation.
(Laws 1990, Chapter 3, Section 4)

3.13.2.8 - INDUSTRIAL REVENUE BONDS

A. Any equipment that is placed into service on or after January 1, 1991, under the provisions of either the Industrial Revenue Bond Act or the County Industrial Revenue Bond Act and that otherwise meets the requirements of the Investment Credit Act is “qualified equipment” for the purpose of the Investment Credit Act.

B. Tangible personal property placed into service prior to January 1, 1991, under the provisions of either the Industrial Revenue Bond Act or the County Industrial Revenue Bond Act is not “equipment” for the purpose of the Investment Credit Act.

[3.13.2.8. NMAC - Rp 3 NMAC 13.6.8, 4/28/2000]

3.13.2.9 - ITEMS NOT “EQUIPMENT”

Tangible personal property which is not a machine, mechanism or tool, or a component or fitting thereof, is not “equipment” for the purpose of the Investment Credit Act. Accordingly such items as furniture, shelving and supplies are not “equipment”. Equipment that is neither essential to nor used in conjunction with the manufacturing plant will not qualify for the investment credit, even if that equipment is physically located in the plant. Nonqualifying equipment may include, but is not limited to: coffee makers, kitchen equipment used in an employee cafeteria and televisions or radios used in an employee lounge or in a reception area.

[3.13.2.9 NMAC - Rp 3 NMAC 13.6.9, 4/28/2000]

3.13.2.10 - ITEMS WHICH MAY BE INCLUDED AS “EQUIPMENT”

The term “manufacturing operation” is defined as a plant where personnel perform production tasks “in conjunction with equipment not previously existing at the site” to produce goods. Equipment need not be employed exclusively in the manufacturing process as long as the equipment is physically located in the plant and is used in conjunction with the production of goods. Therefore, equipment used in conjunction with the production of goods may include, but is not limited to, such items as manufacturing process equipment, lights, boilers, air conditioners, smoke detectors and other equipment essential to maintaining the proper climate for the manufacturing process, packaging equipment used to put the manufactured product in marketable form, warehousing equipment and computers used to control the manufacturing process or to inventory and schedule the shipping of manufactured products.

[3.13.2.10. NMAC - Rp 3 NMAC 13.6.10, 4/28/2000]

7-9A-7. VALUE OF QUALIFIED EQUIPMENT.--

A. Prior to July 1, 2020, the value of qualified equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code of 1986.

B. After June 30, 2020, the value of qualified equipment shall be the purchase price of the equipment unless the equipment is introduced into New Mexico and has been owned for more than one year prior to its introduction into New Mexico by the taxpayer applying for the credit, in which case the value shall be the reasonable value of the equipment at the time of its introduction into New Mexico; provided that no taxpayer shall for any taxable year claim a value of qualified equipment greater than two million dollars (\$2,000,000).

(Laws 2009, Chapter 147, Section 2)

7-9A-7.1. EMPLOYMENT REQUIREMENTS.--

A. Prior to July 1, 2020, to be eligible to claim a credit pursuant to the Investment Credit Act, the taxpayer shall employ the equivalent of one full-time employee who has not been counted to meet this employment requirement for any prior claim in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for the credit for every:

(1) five hundred thousand dollars (\$500,000), or portion of that amount, in value of qualified equipment claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars

(\$30,000,000); and

(2) one million dollars (\$1,000,000), or portion of that amount, in value of qualified equipment over thirty million dollars (\$30,000,000) claimed by the taxpayer in a taxable year in the same claim.

B. After June 30, 2020, for every one hundred thousand dollars (\$100,000) in value of qualified equipment claimed by a taxpayer in a taxable year, the taxpayer shall employ the equivalent of one full-time employee in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for credit.

C. The department may require evidence showing compliance with this section. The department may find that an additional employee meets the requirements of this section, although employed earlier than one year prior to the day on which the taxpayer applies for the credit, if the employee was only being trained prior to that date or the employee's employment was necessitated by the use of the qualified equipment.

(Laws 2009, Chapter 147, Section 3)

3.13.2.11 - EQUIVALENT OF ONE FULL-TIME EMPLOYEE

To calculate the number of full-time-equivalent employees, add the average weekly hours worked or expected to be worked by all employees whose regular weekly work hours are or are expected to be less than forty hours. Divide the total by 40 and round down to the nearest whole number. The rounded number plus the number of employees who work or are expected to work an average of 40 or more hours per week is the number of full-time equivalent employees.

[3.13.2.11. NMAC - Rp 3 NMAC 13.7.8, 4/28/2000]

3.13.2.12 - EMPLOYMENT INCREASE ESSENTIAL

A. The investment credit is available only to manufacturers who increase employment in the relevant periods. Manufacturers who do not meet the employment requirement do not qualify for the investment credit, regardless of the amount of equipment acquired.

B. Example:

(1) X is a manufacturer who establishes a new manufacturing operation in New Mexico on August 1 of year 1. Prior to establishing this plant, X had no operations or employees in New Mexico. Beginning with June 15 of year 1 through August 1, X hires 20 full-time equivalent employees to work in that plant. On January 15 of year 2, X submits an application for

an investment credit with respect to equipment placed in the new plant as of August 1. Since on January 15 of year 1 X had no employees in New Mexico, X may count all 20 employees in meeting the employment requirement for this application.

(2) X acquires and installs additional new equipment during the period September 1 through December 15 of year 1, during which time X hires two more full-time equivalent employees. Unfortunately sales are below X's expectations and so in April of year 2 X lays off 3 full-time employees. In August of year 2, X files a second application for an investment credit with respect to the additional equipment. None of the 20 employees counted in the first application may be counted for purposes of meeting the employment requirement in the second application. Since X has in fact decreased employment over the relevant time period, X does not meet the employment requirement and X's application for a second credit will be denied.

[3.13.2.12 NMAC - N, 4/28/2000]

3.13.2.15 - REPORTING NUMBER OF EMPLOYEES – ESTIMATES

To meet the employment requirement, the credit claimant must report the number of full-time-equivalent employees employed on the day the credit is applied for. This number is to be compared with the number of full-time-equivalent employees on the same day in the prior year. Because complete employee data may not be available for the day on which the credit is applied for, a credit claimant may estimate the number of full-time-equivalent employees employed on the day the credit is applied for, provided that the claimant must provide the actual number of full-time-equivalent employees within forty-five days from the end of the calendar quarter in which the claim is applied for. The fact that an estimate is used in the claim must be clearly indicated. The department may withhold approval of the claim until the correct number is provided and will deny the claim if the correct number is not provided.

[3.13.2.15 NMAC - N, 5/15/07]

7-9A-8. CLAIMING THE CREDIT FOR CERTAIN TAXES.--

A. A taxpayer shall apply for approval for a credit within one year following the end of the calendar year in which the qualified equipment for the manufacturing operation is purchased or introduced into New Mexico.

B. A taxpayer having applied for and been granted approval for a credit by the department pursuant to the Investment Credit Act may claim an amount of available credit against the taxpayer's compensating tax, gross receipts tax or withholding tax due to the state of New Mexico; provided that no taxpayer may claim, except as provided in Subsection C of this section, an amount of available credit for any reporting period that exceeds eighty-five percent of the sum of the taxpayer's gross receipts tax, compensating tax and withholding tax due for that reporting period. Any amount of available credit not claimed against the taxpayer's gross receipts tax, compensating tax or withholding tax due for a reporting period may be claimed in subsequent reporting periods.

C. A taxpayer may apply by September 30 of the current calendar year for a refund of the unclaimed balance of the available credit up to a maximum of two hundred fifty thousand dollars (\$250,000) if on January 1 of the current calendar year:

(1) the taxpayer's available credit is less than five hundred thousand dollars (\$500,000); and

(2) the sum of the taxpayer's gross receipts tax, compensating tax and withholding tax due for the previous calendar year was less than thirty-five percent of the taxpayer's available credit but more than ten thousand dollars (\$10,000).

(Laws 2000, Chapter 45, Section 1)

3.13.2.13 - APPLICATION OF THE CREDIT

The credit allowed by Section 7-9A-8 may not be applied against any local option gross receipts tax imposed by a county or municipality.

[3.13.2.13. NMAC - Rp 3 NMAC 13.8.8, 4/28/2000]

3.13.2.14 - CREDIT NOT TRANSFERABLE

A. Any amount of investment credit claimed and approved may be applied by the claimant only against the gross receipts, compensating and withholding taxes owed by the claimant. The credit amount may not be transferred to any other person, including an affiliate.

B. Example:

(1) Corporation T sets up a manufacturing operation in New Mexico. T subsequently qualifies for \$50,000 in investment credit. After applying \$13,000 to its own gross receipts, compensating and withholding tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T's New Mexico business, including the manufacturing operation. T may not transfer the \$37,000 remaining authorized investment credit to S nor may S apply any of the remaining tax credit to S's gross receipts, compensating and withholding tax liability. T, to the extent T still has gross receipts, compensating and withholding tax obligations, may apply the \$37,000 balance against those obligations.

(2) When two or more corporations merge, the resultant corporation is a continuation of any predecessor corporation. When a business organization changes its form, as for example from a sole proprietorship to a corporation or from a corporation to a limited liability company, so that the resultant entity is a successor in business to the predecessor, the resultant entity shall be deemed a continuation of the predecessor for investment credit purposes. In both cases, since there is no transfer, the resultant entity may claim any amount of approved but unclaimed investment credit held by a predecessor.

[3.13.2.14. NMAC - N, 4/28/2000]

7-9A-9. CREDIT CLAIM FORMS.--The department shall provide credit claim forms. A credit claim shall accompany any return to which the taxpayer wishes to apply an approved credit, and the claim shall specify the amount of credit intended to apply to each return.
(Laws 1991, Chapter 162, Section 7)

7-9A-11 TRANSITION PROVISIONS.--

A. The provisions of this section apply on the date that changes to the provisions in the Investment Credit Act become effective limiting the amount of qualified equipment that may be claimed and increasing the employment requirements with respect to qualified equipment.

B. The amount of any available credit unclaimed on the effective date of the changes described in Subsection A of this section may be claimed, until exhausted, in accordance with the provisions of Section 7-9A-8 NMSA 1978 immediately prior to the effective date of the changes described in Subsection A of this section.

C. After the effective date described in Subsection A of this section, the department shall approve claims submitted prior to that effective date but not approved by that effective date if the claim meets the requirements of the Investment Credit Act in effect immediately prior to that effective date. The claimant may claim the amount of any available credit so approved in accordance with the provisions of Section 7-9A-8 NMSA 1978 immediately prior to the effective date of the event described in Subsection A of this section.

D. After the effective date of the changes described in Subsection A of this section, a claimant may submit and the department shall approve claims submitted on or after that effective date if the claim is with respect to qualified equipment located in the state prior to that effective date that otherwise meets the requirements of the Investment Credit Act in effect immediately prior to that effective date. The claimant may claim the amount of any available credit so approved in accordance with the provisions of Section 7-9A-8 NMSA 1978 immediately prior to the effective date of the changes described in Subsection A of this section.

E. After the effective date of the changes described in Subsection A of this section, the department may approve claims submitted on or after that effective date with respect to equipment not located in the state until after that effective date only in accordance with the provisions of the Investment Credit Act in effect after that effective date.

(Laws 1997, Chapter 62, Section 2)
